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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

ROBERT THRASHER and DELORES
THRASHER,

Plaintiffs,

v.

AIR & LIQUID SYSTEMS CORPORATION,
et al.

Defendants.

Case No. 3:25-cv-00926-AB

**DEFENDANT BAXTER AUTO
PARTS, INC.'S ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFFS' COMPLAINT**

Defendant Baxter Auto Parts, Inc. ("Baxter" or "Defendant") answers Plaintiffs' Complaint ("Complaint") as follows:

1.

Answering Paragraphs 1 through 2, Baxter is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies them.

2.

1 Answering Paragraphs 3 through 16, including all subparts, Baxter admits that it is an Oregon
2 corporation with its principal place of business in Oregon. Baxter denies the remaining
3 allegations to the extent they are directed against it. Baxter is without knowledge or
4 information sufficient to form a belief as to the truth of the allegations regarding other parties,
5 and therefore denies them.

6 3.

7 Answering incorrectly numbered Paragraph 16, located after “FIRST CLAIM FOR
8 RELIEF – STRICT LIABILITY,” Baxter incorporates by reference its responses to Paragraphs
9 1 through 16 as though fully set forth herein.

10 4.

11 Answering Paragraph 17 through 24, including all subparts, Baxter denies the
12 allegations to the extent they are directed at it. Baxter is without knowledge or information
13 sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties,
14 and therefore denies them.

15 5.

16 Answering Paragraph 25, Baxter incorporates by reference its responses to Paragraphs
17 1 through 24 as though fully set forth herein.

18 6.

19 Answering Paragraphs 26 through 30, including all subparts, Baxter denies the
20 allegations to the extent they are directed at it. Baxter is without knowledge or information
21 sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties,
22 and therefore denies them.

23 7.

24 Answering Paragraph 31, Baxter incorporates by reference its responses to Paragraphs
25 1 through 30 as though fully set forth herein.

8.

Answering Paragraph 32, Baxter denies the allegations to the extent they are directed at it. Baxter is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties, and therefore denies them.

9.

Answering Paragraph 33, Baxter denies the allegations to the extent they are directed at it. Baxter is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties, and therefore denies them.

10.

Answering Paragraph 34, Baxter denies the allegations to the extent they are directed at it. Baxter is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties, and therefore denies them.

11.

Answering Plaintiffs' prayer for judgment, Baxter denies that Plaintiffs are entitled to the relief requested, or any relief, from Baxter. Baxter lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations regarding other parties, and therefore denies them.

12.

Any allegations in the Complaint not specifically admitted herein are denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

(Subject Matter Jurisdiction)

13.

This Court lacks subject matter jurisdiction.

1 **Second Affirmative Defense**

2 (Insufficient Process or Personal Jurisdiction)

3 14.

4 This Court lacks jurisdiction over Baxter due to insufficiency of process, insufficiency of
5 service of process, and/or lack of personal jurisdiction.

6 **Third Affirmative Defense**

7 (Improper Venue)

8 15.

9 This Court is an improper venue and/or a *forum non conveniens*.

10 **Fourth Affirmative Defense**

11 (Comparative Fault)

12 16.

13 The damage, injury or condition, if any, as alleged in Plaintiffs' Complaint was caused or
14 substantially contributed to by the comparative fault of Plaintiff Robert Thrasher by conduct
15 including, but not limited to:

- 16 a) Failure to properly use respirators or other protective measures;
17 b) Improper use of asbestos-containing products;
18 c) Failure to heed warnings;
19 d) A voluntary assumption of known and appreciated risks; and
20 e) Any other factors that discovery may disclose regarding the degree of his fault.

21 **Fifth Affirmative Defense**

22 (Conduct of Others)

23 17.

24 Any damages Plaintiffs may have suffered, which damages are expressly denied, were
25 caused by the negligence or other conduct of one or more of the other Defendants to this lawsuit

1 or, in the alternative, by the negligence or other conduct of some person, corporation,
2 association, or other entity not presently a party to this lawsuit.

3 **Sixth Affirmative Defense**

4 (Assumption of Risk)

5 18.

6 Plaintiff Robert Thrasher voluntarily and expressly assumed the risk that caused the
7 alleged damages, if any, thereby barring these claims or reducing Plaintiffs' recovery.

8 **Seventh Affirmative Defense**

9 (Employers' Negligence)

10 19.

11 Any injury, condition or loss suffered by Plaintiffs was caused or permitted by the
12 negligent failure of Plaintiff Robert Thrashers' employers to provide adequate instructions to him
13 concerning the safe use of asbestos products and by said employers' failure to provide Plaintiff
14 Robert Thrasher with a safe place of work, and/or adequate equipment to protect Plaintiff from
15 harmful exposure.

16 **Eighth Affirmative Defense**

17 (Sophisticated User)

18 20.

19 Plaintiff Robert Thrasher was employed by knowledgeable and sophisticated employers,
20 and/or was a knowledgeable and sophisticated user himself. Consequently, any duty to warn that
21 Baxter may have had was not the proximate cause of any alleged injury.

22 **Ninth Affirmative Defense**

23 (Apportionment of Damages)

24 21.

25 If it is proven at trial that Baxter is liable for damages to Plaintiffs, which liability is

1 expressly denied, said liability is not sole but rather proportionate and, consequently, Baxter is
2 entitled to have its liability limited to its proportionate share or, alternatively, is or may be entitled
3 to contribution from such other defendants, persons or entities.

4 **Tenth Affirmative Defense**

5 (Statute of Limitations or Repose)

6 22.

7 Plaintiffs' claims against Baxter are barred, in whole or in part, by the applicable statutes
8 of limitations or repose, including but not limited to ORS 12.115.

9 **Eleventh Affirmative Defense**

10 (Laches, Waiver and Estoppel)

11 23.

12 Plaintiffs' claims against Baxter are barred by laches, and/or waiver or estoppel.

13 **Twelfth Affirmative Defense**

14 (Offset)

15 24.

16 Pursuant to ORS § 31.580, to the extent that any injury or damage which Plaintiff Robert
17 Thrasher may have sustained has been subject to compensation by collateral sources or
18 otherwise, any recovery to which Plaintiffs might otherwise be entitled is barred or reduced
19 thereby.

20 **Thirteenth Affirmative Defense**

21 (Mitigation of Damages)

22 25.

23 Plaintiffs failed to mitigate their damages.

24 **Fourteenth Affirmative Defense**

25 (Intervening/Superseding Cause)

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26.

Plaintiffs' alleged damages were caused by an intervening or superseding cause for which Baxter is not responsible.

Fifteenth Affirmative Defense

(Set-Offs)

27.

To the extent that Plaintiffs have released, settled, or otherwise compromised his claims in whole or in part, those claims are barred by operation of law or, alternatively, are reduced by way of set-off.

Sixteenth Affirmative Defense

(Failure to State a Cause of Action)

28.

Plaintiffs' Complaint fails to state facts sufficient to constitute a cause of action against Baxter upon which relief can be granted.

Seventeenth Affirmative Defense

(Conspiracy)

29.

There is no concert of action or conspiracy between Baxter or any alleged predecessor and any of the other defendants herein. Baxter or any alleged "predecessor" and the other defendants are not joint tortfeasors or coconspirators, and Baxter may not be held jointly and severally liable with the other defendants herein.

Eighteenth Affirmative Defense

(Misuse)

30.

Plaintiff Robert Thrasher's alleged injuries or damages, if any, were caused by the

1 alteration, unintended use, misuse, and/or improper maintenance, service or repair of Baxter
 2 product after it left the custody and control of Baxter or any alleged predecessor of Baxter and
 3 such act and omissions were the proximate cause of Plaintiff Robert Thrasher's alleged injury or
 4 damages.

5 **Nineteenth Affirmative Defense**

6 (Incorporation of Other Defendants' Affirmative Defenses)

7 32.

8 Baxter hereby incorporates all affirmative defenses raised by other defendants to the
 9 Complaint or raised in response to any cross-claim, to the extent they are available to Baxter and
 10 would serve to either limit or bar any recovery on the Complaint or cross-claims against Baxter.
 11 Baxter further reserves the right to add further affirmative defenses as may be revealed by further
 12 investigation and/or discovery.

13 *****

14 **RESERVATION OF RIGHTS**

15 33.

16 Baxter hereby specifically reserves the right to amend its answer by way of adding
 17 additional affirmative defenses, counterclaims, cross-claims or by instituting Third Party
 18 Actions, and/or reserves the right to maintain a separate action against each and every defendant
 19 named or to be named herein for indemnification and/or contribution, including Baxter's defense
 20 costs and reasonable attorneys' fees.

21 *****

22 **PRAYER FOR RELIEF**

23 34.

24 Defendant Baxter Auto Parts, Inc. requests the following relief:

25 (a) That Plaintiffs' Complaint against Baxter be dismissed with prejudice;

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(b) That Plaintiffs recover nothing from Baxter on Plaintiffs' claims herein;

(c) That Baxter be awarded its costs and disbursements herein, including reasonable attorneys' fees;

(d) That Baxter be granted such other and further relief as the court may deem just and proper; and

(e) That in the event Baxter is found liable to Plaintiffs herein, which liability is expressly denied, Baxter be awarded judgment, either herein or later in a separate trial or action against one or more of the other defendants named or to be named herein for contribution and/or indemnification, including its defense costs and attorneys' fees.

DATED this 12th day of June 2025.

RIZZO BOSWORTH ERAUT PC

By: /s/Claude Bosworth
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3M COMPANY, et al.,

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**DECLARATION OF DELIVERY
AND/OR MAILING**

I am employed by the law firm of Rizzo Bosworth Eraut PC in Portland, Oregon. I am over the age of eighteen years and not a party to the subject cause. My business address is 1300 SW Sixth Avenue, Suite 330, Portland, OR 97201.

On the date below, I caused to be served on all parties in this action by transmitting a true copy of the foregoing document in the following manner unless otherwise indicated.

VIA ECF ONLY

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***Counsel for Defendant The William
Powell Company***

***Attorneys for Defendant Hollingsworth &
Vose Company***

I declare under penalty of perjury and under the laws of the State of Oregon that the foregoing is true and correct.

Executed at Portland, Oregon, this 12th day of June 2025.

s/Shannon Boyd

Shannon Boyd
Paralegal